

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

WILLIAM STULL,
Plaintiff.

V.

BNSF RAILWAY COMPANY f/k/a as
BURLINGTON NORTHERN SANTA FE
RAILROAD COMPANY,

Defendant.

) Court No.

) Jury Demand

COMPLAINT AT LAW

COUNT I

NOW COMES the Plaintiff, WILLIAM STULL, by and through his attorneys, GEORGE T. BRUGESS and HOEY & FARINA, P.C., and for his Complaint against the Defendant, BNSF RAILWAY COMPANY, states as follows:

1. This action arises under, and the rights and liabilities of the parties to this cause are governed by, the Federal Employers' Liability Act, 45 U.S.C. sec. 51 et seq.

2. At all times herein, the Defendant, BNSF RAILWAY COMPANY, was and is a railroad corporation doing business in the State of Nebraska.

3. At all times herein, the Defendant, BNSF RAILWAY COMPANY, was a common carrier by railroad engaged in interstate commerce.

4. On October 26, 2005, and at all pertinent times, the Defendant, BNSF RAILWAY COMPANY, owned, maintained and operated the Ashland Yard, in Ashland, Nebraska.

5. On October 26, 2005, the Plaintiff was employed by the Defendant, BNSF RAILWAY COMPANY, as a conductor, and his duties as such were in furtherance of interstate commerce for Defendant.

6. On October 26, 2005, the Plaintiff was employed by the Defendant, BNSF RAILWAY COMPANY as a conductor. The ground on which Plaintiff was required to work was rough, uneven, contained depressions and was littered with large loose ballast and other debris. Plaintiff was required to walk the Ashland Yard six to eight times causing him to injure his ankle and sustain bodily injury.

7. At the time and place alleged, the Defendant, BNSF RAILWAY COMPANY, had a nondelegable duty to provide the Plaintiff with a reasonably safe place to work, to inspect the worksite and to provide sufficient manpower to safely maintain the worksite.

8. In violation of its duties, the Defendant, BNSF RAILWAY COMPANY, committed one or more of the following negligent acts or omissions:

- (a) failed to provide the Plaintiff with a safe place to work;
- (b) failed to warn the Plaintiff of the unsafe condition of the ground;
- (c) violated certain safety standards including BURLINGTON NORTHERN SANTA FE RAILROAD engineering standards, FRA regulations and industry safety standards;
- (d) violated Track Safety Standards 49 C.F.R. Part 213;
- (e) failed to inspect the Ashland Yard grounds on a regular basis for unsafe conditions;
- (f) failed to enforce safety rules and thereby allowed unsafe practices to become the norm;

(g) was otherwise careless and negligent.

9. Defendant's failure to provide Plaintiff, WILLIAM STULL, with a safe place to work by one or more of the aforementioned negligent acts or omissions caused, in whole or in part, Plaintiff's injuries.

10. As a consequence, Plaintiff, WILLIAM STULL, incurred injuries which have caused and will continue to cause him great pain, suffering, inconvenience, anguish, and disability; as a further result, Plaintiff, WILLIAM STULL, has been and will in the future be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired; as a further result, Plaintiff, WILLIAM STULL, has incurred medical, hospital, and related expenses and is reasonably certain to incur further medical, hospital, and related expenses in the future.

11. Plaintiff, WILLIAM STULL, demands trial by jury.

WHEREFORE, the Plaintiff, WILLIAM STULL, demands judgment in his favor and against Defendant, BNSF RAILWAY COMPANY, in an amount to be determined by the jury plus the costs of this suit.

COUNT II

NOW COMES the Plaintiff, WILLIAM STULL, by and through his attorneys, GEORGE T. BRUGESS and HOEY & FARINA, P.C., for his Petition for Damages against Defendant, BNSF RAILWAY COMPANY, a railroad corporation, and states as follows:

1. This action arises under, and the rights and liabilities of the parties to this cause of action are governed by the Federal Employers' Liability Act, 45, U.S.C. § 51 et seq.

2. At all times herein, the Defendant, BNSF RAILWAY COMPANY, was and is a railroad corporation doing business in the State of Nebraska.

3. At all times herein, the Defendant, BNSF RAILWAY COMPANY, was a common carrier by railroad engaged in interstate commerce.

4. At all pertinent times Plaintiff was employed by Defendant, BNSF RAILWAY COMPANY, as a conductor/switchman.

5. At all pertinent times, Plaintiff was performing work for Defendant in connection with or in furtherance of Defendant's business of interstate commerce and transportation.

6. On and prior to October 26, 2005, at all pertinent times, Defendant, BNSF RAILWAY COMPANY, managed, maintained, and used as a portion of its railroad systems, track equipment and railyards in the State of Nebraska.

7. In the course of his duties as a conductor/switchman Plaintiff was required to and did walk along the track at BNSF RAILWAY COMPANY railyards.

8. It was the continuing duty of the Defendant, as employer, at the time and place in question, to provide Plaintiff with a reasonably safe place to work; to provide reasonably safe conditions in which to work; to provide reasonably safe tools and equipment, adequate work methods, supervision and adequate manpower.

9. In violation of its duty, Defendant negligently and carelessly failed to provide Plaintiff with a safe place to work by committing one or more of the following negligent acts or omissions:

- (a) failed to adopt, install, implement and enforce a safe method and procedure for the work;
- (b) failed to provide Plaintiff for the performance of said duties, task or job assigned, proper and safe tools and equipment;
- (c) failed to provide sufficient personnel to perform the tasks required;
- (d) negligently and carelessly failed to maintain its railyards;
- (e) negligently and carelessly failed to provide adequate assistance to Plaintiff for the safe performance of his job task;
- (f) negligently and carelessly failed to provide Plaintiff with a safe walking surface in BNSF RAILWAY COMPANY railyards;
- (g) negligently and carelessly failed to use small ballast properly compacted for yard walkways; and
- (h) otherwise failed to exercise ordinary care to provide Plaintiff with a safe place to work.

10. Defendant's failure to provide Plaintiff with a safe place to work by one or more of the foregoing negligent acts or omissions caused, in whole or in part, cumulative trauma and injury to the Plaintiff.

11. As a direct and proximate result of the Defendant's negligence, Plaintiff, WILLIAM STULL, has suffered severe and permanent injuries, which has caused and will continue to cause him great pain, suffering, inconvenience, anguish and disability; as a result, Plaintiff has incurred medical, hospital and related

expenses, and is reasonably certain to incur further medical, hospital and related expenses in the future; as a further result, Plaintiff has and will continue to experience physical pain, as well as permanent disability, and disfigurement. He has further lost, and will continue to lose, wages and benefits from his gainful employment.

12. Plaintiff, WILLIAM STULL, demands trial by jury.

WHEREFORE, the Plaintiff, WILLIAM STULL, demands judgment in his favor and against Defendant, BNSF RAILWAY COMPANY, in an amount to be determined by the jury plus the costs of this suit.

Respectfully submitted,

George T. Brugess

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